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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
On Universal Service	j	

COMMENTS

BellSouth Corporation and BellSouth Cellular Corp. ("BellSouth") hereby submit their Comments in support of the Petition for Expedited Consideration filed September 25, 1997, by Cellular Telecommunications Industry Association (CTIA).

The methodology for recovery of universal service fund contributions from end-users is of significant concern to BellSouth. As CTIA discusses in its Petition, and as BellSouth discussed in its Comments On and Oppositions to Petitions for Reconsideration, it is critical that the Commission clarify its decision so that CMRS providers may recover their contributions from all of their customers, based on both intrastate and interstate revenues.

In its <u>Universal Service Order</u>,¹ the Commission determined that telecommunications carriers may recover contributions to the universal service fund only from interstate customers.²
While the distinction between interstate and intrastate customers has some meaning with regard to traditional wireline communications, it has no parallel context with regard to CMRS services. It

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Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157 (released May 8, 1997) ("Universal Service Order").

² Id. at ¶825, 838.

is urgent that the Commission clarify its order to ensure that BellSouth and other CMRS providers are not precluded from recovering their contributions to the fund.

As CTIA correctly points out, CMRS providers have long provided their services without regard to jurisdictional boundaries. CMRS providers do not have "interstate" customers; rather, they have customers who in some months make or receive interstate calls. Those same customers, in other months, may not make or receive interstate calls. Certainly, the Commission's Universal Service Order should not be construed to mean that a CMRS customer is only an interstate customer in the months he actually makes or receives such calls. Such an interpretation would place a nearly insurmountable burden on CMRS providers to keep track of interstate customers such that recovery of universal service contributions would be virtually impossible.

For example, even assuming that a CMRS provider has the ability accurately to distinguish between intrastate versus interstate calls, which it does not, a CMRS provider would not know until after billing cycles were completed for a given month which or how many customers should be assessed, or how much. Pass-through of contributions would likely be months in arrears. Given the significant churn in the CMRS industry, recovery would be impossible from a significant percentage of a CMRS provider's customers. Furthermore, because an individual customer's contribution would depend on the number of other "interstate" customers, the pass-through to individual customers would fluctuate wildly, from month-to-month, and would produce very unpredictable billing. In fact, it is possible in many instances that the universal service fund pass-through to a customer would be greater than the customer's interstate charges which triggered the pass-through. Such a result would inhibit significantly customers' interstate usage – a result the Commission certainly does not want to foster. Alternatively, if recovery were

based on simply increasing rates for interstate calls, this still creates an extremely difficult if not insoluble problem for CMRS providers.

As CTIA has previously discussed, CMRS providers do not have the ability to distinguish between intrastate and interstate calls.³ CMRS service has never recognized traditional jurisdictional boundaries. For the purposes of providing CMRS service, the jurisdictional nature of a call is irrelevant. Accordingly, CMRS providers have had no reason to track calls by traditional jurisdictional designations.

Further, CMRS calls do not neatly fall within traditional jurisdictional classifications. For example, many CMRS systems cross state lines. In such systems, calls frequently originate in a remote cellsite, are transferred across state lines to the CMRS switch, and then are passed to the public-switched telephone network. Such calls may or may not be interstate, but the real problems from the CMRS provider's perspective are the determination of the mobile customer's location, the call path and the consequent labeling of the customer or call as "interstate."

BellSouth's call-processing and billing systems do not possess this capability.

Development of the capability – assuming such is even possible – would be a very lengthy process

³ CTIA Petition for Reconsideration and Clarification at 13-18 (filed July 17, 197). <u>See also BellSouth Comments On and Opposition to Petitions for Reconsideration at 8 (filed August 18, 1997).</u>

The Commission has expressly acknowledged the problems which CMRS providers face in determining whether calls are intrastate or interstate. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶1044 (1996). ("We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows . . . given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges.").

and will be extremely costly. In the meantime, no recovery would be possible. Nor, as previously discussed, would retroactive recovery be possible, because of customer churn.

Nothing in the *Universal Service Order* compels such an unfair result. The Commission's decision that fund contributors recover those contributions only from "interstate" customers was made in order to avoid carriers having to go back to their respective state commissions for rate adjustments.⁵ This concern, however, does not exist for CMRS providers because of their exemption from state rate regulation.

The initial universal service invoices for carriers' contributions are expected to be received in November or December of this year, with the initial payment into the fund due in January 1998. In order for carriers which opt to recover their contributions not to fall behind in their cost-recovery, they must begin passing through the contributions in their December bills, so that payments can be received in January. Wireline carriers, whose services clearly distinguish between interstate and intrastate jurisdictions, will be able to begin recovering their contributions on a timely basis.

In order to remove any uncertainty for CMRS providers and to ensure an opportunity for a timely recovery of their universal service contributions, it is imperative that the Commission grant the expedited consideration requested by CTIA. Otherwise, contrary to the Commission's

^{5 &}lt;u>Universal Service Order</u>, ¶825, 838.

intent, the CMRS industry will have been burdened with an unfunded mandate for which no recovery is possible.

Respectfully submitted,

BELLSOUTH CORPORATION BELLSOUTH CELLULAR CORP.

Bv

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Dated: October 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of October, 1997 served all parties to this action with a copy of the foregoing COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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